

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.16 of 1992

Arising out of PS.Case No.-127 Year-1985 Thana-Sikandra District- MUNGER

The State of Bihar

.... Appellant

Versus

1. Vijay Singh @ Vijay Kr. Sharma.

2. Tanik Singh @ Awadh Kishore Prasad Singh.

Both residents of village Lohanda (Lohna), P.S. Sikandra, District Munger (Jamui).

.... Respondents

with

Criminal Appeal (DB) No. 219 of 1992

Arising out of PS.Case No.-127 Year-1985 Thana-Sikandra District- MUNGER

1. Krishnandan Singh.

2. Rajnandan Singh.

3. Ramnandan Singh.

All sons of Late Bindeshwari Singh.

All residents of village Lohanda, P.S. Sikandra, District Jamui.

4. Bhagwan Singh @ Bhagwan Prasad Sharma, son of Late Lala Prasad, resident of village Tulsigarh, P.S. Chandi, District Nalanda.

.... Appellants

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 271 of 1992

Arising out of PS.Case No.-127 Year-1985 Thana-Sikandra District- MUNGER

Shyamnandan Singh, son of Late Chhotelal Singh, resident of village Lohanda, P.S. Sikandra, District Jamui.

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance:

Govt. Appeal (DB) No. 16 of 1992

For the Appellant : Sri Dilip Kumar Sinha, APP

For the Respondents : Sri Akhileshwar Prasad Singh, Sr. Advocate

Sri Sanjiv Kumar Singh, Advocate

Cr. Appeal (DB) No. 219 of 1992 with Cr. Appeal (DB) No. 271 of 1992

For the Appellants : Sri Naresh Dikshit, Advocate

Sri Kunal Tiwary, Advocate

For the State : Sri Dilip Kumar Sinha, APP

Sri Abhimanyu Sharma, APP

For the Informant : Sri Ajay Kumar Thakur, Advocate

Sri Ravi Kumar, Advocate

**CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
and
HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL**
C.A.V. JUDGMENT
(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)
Date: 26-03-2015

Seven accused persons were put on trial by the learned Sessions Judge in Sessions Case No. 65 of 1986 by being charged under Sections 323, 302, 364, 449, 450, 380/34 and 120B of the Indian Penal Code. Accused Vijoy Singh @ Vijoy Kumar Sharma and Tanik Singh @ Awadh Kishore Prasad Singh had distinctly been charged under Sections 342/34 of the Indian Penal Code. The judgment in the case was delivered by the learned 12th Additional Sessions Judge, Munger on 05.06.1992 by which two accused, namely, Vijoy Singh @ Vijoy Kumar Sharma and Tanik Singh @ Awadh Kishore Prasad Singh were acquitted of all the charges, five other accused persons who are the appellants in the two criminal appeals, namely, Krishna Nandan Singh, Raj Nandan Singh, Ram Nandan Singh, Shyam Nandan Singh and Bhagwan Singh @ Bhagwan Prasad Sharma were convicted of committing offences under Sections 364/34 and 302/34 of the Indian Penal Code and thus, they were also acquitted of charges under Sections 449, 450, 380, 323 and 120B of the Indian Penal Code. The five appellants, named above, who had been convicted under Sections 364/34 and 302/34 of the Indian Penal Code were heard on

sentence and each of them was directed to suffer rigorous imprisonment for life under each of the two counts, the sentences being directed to run concurrently. Those five appellants have preferred the two criminal appeals against their conviction and sentence imposed upon them. While the State of Bihar has preferred a separate appeal for challenging the acquittal of Vijoy Singh @ Vijoy Kumar Sharma and Tanik Singh @ Awadh Kishore Prasad Singh. These appeals thus, arising out of the same judgment, have been heard together and are being disposed of by this common judgment.

2. Neelam, the deceased, was married to Ashok Kumar Singh who happened to be the son of Ganesh Prasad Singh (P.W.3) and brother of Ramanand Singh (P.W.18) the informant of the case. The informant stated that Neelam, her husband Ashok Kumar Singh and the informant the elder brother of her husband were residing in the house of her father situated at Simultala which belonged to late Jang Bahadur Singh the father of Neelam. It was stated that while the informant, the deceased and her husband were residing in some part of the house, some other parts of it had been let out to tenants who were also in occupation of their tenanted portion.

It was stated by the informant that on the 30th of August, 1985 at about 10 p.m. he was sitting on the rickshaw of one

Doman Tanti (not examined) and was talking to the said Doman Tanti, Daso Mistri and a blind man deceased Neelam, at that time was sleeping inside the house and her husband Ashok Kumar Singh had gone to his native place Ghonghasa. All on a sudden the seven accused persons, named in the First Information Report, which included the five appellants of the two criminal appeals and the two respondents of the government appeal came there along with 15 unknown persons from north. As soon as the accused persons had arrived, respondent Vijoy Singh @ Vijoy Kumar Sharma is said to have pulled down the informant (P.W.18) from the rickshaw over which he was sitting. At that time Vijoy Singh @ Vijoy Kumar Sharma was accompanied by 2-3 unknown persons of Lohanda. The informant raised alarms shouting as to why they were committing such highhandedness upon which two unknown persons pointed pistols towards him and commanded him to keep silent, else, he will be shot dead. Those accused persons caught the informant, assaulted him with fists and slaps and took him towards the north side of the house near a well and kept him confined there. In the meantime, appellant Krishna Nandan Singh got the doors of the entry of the house unlatched through Kumud Ranjan Singh (not examined) and entered inside it with 5-7 persons and dragged Neelam out of the house. While dragging Neelam out of the room, the accused persons also picked up her two Sarees

with two blouses and two petticoats besides a pair of her slippers.

After Neelam had been brought out, four persons lifted Neelam by catching her legs and hands and started moving towards Lohanda.

The informant raised alarms as a result of which people of the mohalla as also his uncle Chandra Shekhar Prasad Singh (P.W.4),

Vinay Kumar Singh @ Ganauri Singh (P.W.2) and Ram Naresh

Singh (P.W.5) came to the place of occurrence and saw and identified the accused persons. Those witnesses also told the

accused persons as to why they had committed such an act but the accused persons did not give Neelam up and took her towards north. The informant stated that no one dared follow the accused

persons on account of frighten by the pistols they had been carrying and further that besides being identified the accused who had been named by him in the First Information Report he could identify those also who participated in commission of the offence.

3. The motive for commission of the offence, as per the informant, was that let Jang Bahadur Singh who happened to be the father of Neelam had no son and his house which was situated at Simultala was in possession of his elder daughter Neelam. In order to divesting Neelam of the house and the other immovable properties of her father, the accused persons had committed her abduction in order to killing her. It was further stated that some litigation was pending in between the wife of late Jang Bahadur

Singh and his other co-sharers.

4. The First Information Report of the case (Ext.16) was drawn up at the statement of Rama Nand Singh (P.W.18) the informant of the case by Uday Kant Pathak (P.W.21) who was the Officer-in-Charge of Sikandara police station which had the jurisdiction over the place of occurrence. At the time of lodging the First Information Report, as may appear from the very document as also from the very first line of the evidence of P.W.21, P.W.18 was accompanied by Vinay Kumar Singh @ Ganauri Singh (P.W.2) and Chandra Shekhar Prasad Singh (P.W.4) as also by Ram Naresh Singh (P.W.5) out of whom Vinay Kumar Singh @ Ganauri Singh (P.W.2) and Chandra Shekhar Prasad Singh (P.W.4) had signed the document as witnesses to the fact that the report had been lodged in their presence. P.W.21 thereafter took up the investigation of the case and came to the place of occurrence at 11.20 p.m. He made search for Neelam but could not find trace her house. He thereafter went to the village of accused persons at Lohanda and reached there at 11.30 p.m. and again searched for the lady Neelam but without any success. He searched for the accused persons also searched their houses but could not find anything on search of their houses nor could he find any of the accused persons. The search memo has been marked 'A' for identification. The Investigating Officer again came to

Simultala at 1 a.m. and recorded the statements of Chandra Shekhar Prasad Singh (P.W.4), Vinay Kumar Singh @ Ganauri Singh (P.W.2), Ram Naresh Singh, Kumud Ranjan Singh (not examined) and Chando Devi (also not examined). He thereafter inspected the place of occurrence which was a house facing west situated east of the macadamized road. There was a room situated in front of the house and there were four other houses located on the Verandah of the house. There was a passage which was leading to the courtyard of the house in the eastern and that passage was located north of the southern room. The building was two parts from inside. One part of the house was accessible by the above noted lane but the southern part of it was accessible by another lane situated in the southern part of the house and to the west of that passage was situated a room which was interconnected with another room. There were two interconnected rooms and there was no exit towards the courtyard or on the outer side of the house. There were other two rooms which were on the south of the passage and those rooms opened in the passage and the rooms which were opening into the passage, in one of them the Investigating Officer found a *Chowki*, a cot, a rack fixed in the wall with some books, one *Algani* (a wooden of bamboo structure meant for hanging clothes) in which, as per the Investigating Officer, was residing Neelam the deceased. In the same room the

Investigating Officer found a *Khadi Chadar* kept in a *Jhola* and some make-up articles. There was a rope fixed in the passage which was also used for putting clothes on it and he found some clothes hanging by it. To the east of the passage was another room facing north and in that room also, the Investigating Officer found a cot, bed, books, boxes etc. There was another room in the *Aangan* which was facing east and it was being used as the kitchen and he found fuel materials kept inside it. The lavatory was situated on the north-eastern corner of the courtyard. The southern most room which was located on the Verandah of the house and which was facing west was, as per the evidence of P.W.21, in occupation of the Block Education Extension Officer who was a tenant of the house whose office was being run in the two interconnected room situated north of the passage and signboard to that effect was also hanging there. Some records of the office of the Block Education Extension Officer was also there whereas in the northern most room located on the Verandah, the Investigating Officer found some bags of cement stored there. Fallow land was towards the north of the house whereas a well was located on the south-eastern corner of the house. Another well was also located on the north-eastern corner in the fallow land. The house was surrounded by house of other persons on all its sides.

5. The Investigating Officer stated that while he was still

in the process of inspecting the place of occurrence, he received an information at 7.45 a.m. that the dead body of Neelam was lying in a field situated west of the road which was in front of the house and as such he went there and found the dead body at 8 a.m. He held inquest upon the dead body and prepared the inquest report (Ext.2) in presence of witnesses, namely, Chandra Shekhar Prasad Singh (P.W.4) and Nand Kishore Singh (P.W.1). The field where the dead body was found was situated at a distance of 1000 yards north of the place of occurrence house of Jang Bahadur Singh and was at a distance of about 400 yards in the west of the road running in between Lakhisarai and Sikandara. The dead body was found lying 10 feet north of the southern ridge and 2 feet east of the western road. Paddy plants were standing there and water was available in the field here and there. The standing paddy crop was found trampled and the blood was mixed with water which was found by the Investigating Officer. The house of the accused persons was at a distance of about 1½ k.m. from that field and village Achmiyo (sic) was located at a distance of about 1 k.m. to the west of the field and Sikandara Block Development Office was at a distance of about 1/2 k.m. straight way from the field. To the south of the field in which the dead body was fond was located another field of one Lalo Yadav and the Investigating Officer found on the northern ridge of that field a petticoat, two blouses,

one chester (brassier) and two Sarees and he seized those articles in presence of the witnesses, above named, by preparing seizure memo (Ext.5).

6. P.W.1 found the dead body lying by its back and the head was tilted towards right, the eyes were half open and the left hand of the deceased was bent towards the head while her right hand was under her body. Her left leg was placed at her right leg and her right hand was crashed and a paddy plant was in the grasp of that right hand in the right palm. The throat was slit in its front and only blouse was over her body and the lower part of her body was naked except that a red coloured Saree had been placed at the private part of the dead body. The lock of hair had been band into with the help of a ribbon and there was a ring like ornament in her nose and a gold ring was placed in one of her fingers of her right hand. The Investigating Officer requisitioned P.W.9 Dayanand Mishra to take the photograph of the deceased and that photograph was marked by the learned trial Judge as Ext.9 and that is available on the lower court records with the exhibited documents which indicates that the description of the dead body is fully true.

The Investigating Officer sent the dead body by preparing the dead body challan for post-mortem examination through Constable 707, Ram Bilash Mandal. The Investigating Officer thereafter recorded the statements of witnesses, obtained

the post-mortem report and the copy of the photograph and took steps for enforcing the appearance of the accused persons. After receiving the post-mortem examination report, the Investigating Officer made an enquiry from the doctor through Ext.17 as to whether the deceased had been raped and the Deputy Superintendent of Sub-divisional Hospital, Jamui through Ext.18 pointed out that there was no evidence of rape committed on the dead body. The Investigating Officer after recording the statements of witnesses and finding material sufficient sent the five appellants and the two respondents up for their trial which resulted in the impugned judgment.

7. The defence of the appellants was many folds. It was suggested that they did not commit an offence alleged and they had been roped in on account of the admitted enmities and litigation. They appeared also challenging that Jang Bahadur Singh was not married to Premlata @ Prabhawati the sister of P.W.7 Rajendra Prasad Singh rather he was married to a different lady and further that Neelam the deceased was not the daughter of late Jang Bahadur Singh from the said Premlata @ Prabhawati.

8. In support of the charges, the prosecution examined as many as 27 witnesses out of whom Nand Kishore Singh (P.W.1) was a witness to the inquest as also to the seizure of the clothes which were found lying near the dead body. Vinay Kumar Singh

@ Ganauri Singh (P.W.2) was an eye-witness to the whole occurrence with Chandra Shekhar Prasad Singh (P.W.4) and Ram Naresh Singh (P.W.5) who had supported P.W.18 Ramanand Singh the informant of the case. Ganesh Prasad Singh (P.W.3) the father of the informant and the father-in-law of deceased Neelam, as per his evidence, who gave statement *inter alia* on the fact that Neelam was married to his second son Ashok Kumar Singh and that she was residing in the house and after learning about the incident, he rushed to Simultala and requested the police to take necessary steps for tracing out Neelam but the police was indifferent towards his request and further that the dead body of Neelam was found in the paddy field and the scene was extremely painful. P.W.6 Suresh Prasad Singh was a teacher who had given evidence on the fact that Neelam was residing in the house in question which originally belonged to her father late Jang Bahadur Singh and further that he knew Neelam because late Jang Bahadur Singh had been his colleague and he used to go to the house in question because Ram Chhabila Singh the Block Education Extension Officer was a tenant in that house. Rajendra Prasad Singh (P.W.7) was the maternal uncle of the deceased Neelam and he gave evidence on the motive part of the occurrence as also on the fact that Neelam was residing in the house with her husband and the informant and that P.W.7 was also residing there in order

to extending protection to Neelam who had the threat over life. Baleshwar Prasad Singh (P.W.8) was a witness of formal character who produced the school admission register and this Court could not understand as to what was the purpose in producing the school admission register as the evidence of P.W.8 did not appear necessary for proof of the charges. Dayanand Mishra (P.W.9), it has already been noted, the photographer who was hired by P.W.21 the Investigating Officer to take photograph of the dead body which photograph had been marked Ext.9 on behalf of the prosecution. P.W.10 Ashok Kumar Choudhary was a witness who went to the place of occurrence after knowing about the occurrence while Brahmdeo Singh (P.W.11) gave statement that he had acted as a mediator to negotiate the marriage of Neelam to Ashok Kumar Singh while Umesh Singh (P.W.12) also gave statement on the same fact, like, Ashok Kumar Choudhary (P.W.10) that he also went to the place of occurrence after learning about the occurrence. Satya Narain Singh (P.W.13) had held post-mortem examination on the dead body of Neelam while Ram Balak Singh (P.W.14), Ram Bilash Singh (P.W.15) had given evidence that they had participated in the marriage of Neelam and had identified their photographs from the group photographs which had also been brought on record as Exts. 12 series. Kapildeo Singh (P.W.16) had given evidence on the marriage of Premlata @ Prabhawati the

mother of Neelam to let Jang Bahadur Singh and had stated that after the death of Jang Bahadur Singh, Premlata @ Prabhawati was residing at the residence of P.W.7 Rajendra Prasad Singh. Kameshwar Thakur (P.W.17) was the *Pandit* who had performed the marriage of Neelam with Ashok Kumar Singh. P.W.19 Constable Ram Vilash Mandal had taken the dead body for post-mortem examination while P.W.20 Satya Narain Singh had given evidence on the marriage of Jang Bahadur Singh and Neelam his daughter. Anhach Singh (P.W.22) also gave statement on the marriage of Neelam and Kiran Kumari (P.W.23) the younger sister of Neelam who had given evidence not only on the marriage of Neelam, has also stated that Neelam was residing in the house and she has overheard the appellants' plan to murder Neelam. Vinod Kumar (P.W.24) was a witness of formal character who had given evidence that the document which was requisitioned by the learned trial Court was searched by him and the document was produced before the trial court by him. P.W.25 Bhuneshwar Prasad had produced the nomination papers on the requisition of the trial court from the office of the District Superintendent of Education where he was posted as an Assistant. P.W.26 Ranvijay Singh was also a witness of formal character who had produced the Vakalatnama filed by advocates of this Court in Civil Revision No. 575 of 1988 which was preferred before this Court. P.W.27 Damodar Singh

was again a witness of formal character who had produced the copy of the bail order.

It may be pertinent to point out at this very place itself that the evidence of P.Ws. 24 to 27 was of no consequence as regards the proof of the charges.

9. The defence also examined seven witnesses. D.W.1 Anirudh Singh had proved two *Kewalas* which were executed in favour of late Jang Bahadur Singh and Chhote Lal Singh. This Court again could not find out the relevance of production of these two *Kewalas*. D.W.2 Madan Mohan Gupta also produced and we could not even find out from the whole bunch of prosecution evidence as to what was the basis in context to which D.W.2 was examined and had produced the *Kewalas*. D.W.3 Ashok Kumar Singh was the Deputy Superintendent of Police in Jamui and has supervised the case whereas D.W.4 D.N. Gautam was the Superintendent of Police, Munger and who had also supervised the case. D.W.5 Gajadhar Singh was examined to say that the office of Sri Krishna Mahavidyalaya, Lohanda of which institution, he was a treasurer was located in the house of Chhote Lal Singh. D.W.6 Dasarath Prasad Singh was a teacher in the Primary School, Naungarh and he had produced a certificate which was in the handwriting of one Ram Bilash Singh the School Sub-Inspector. This Court again failed to appreciate as to what was the purpose of

examining D.W.6 and producing the certificate. D.W.7 Fauzdari Singh was the father-in-law of appellant Shyam Nandan Singh and he had given evidence on alibi of that appellant by stating that on the day of occurrence appellant Shyam Nandan Singh was at Barahiya with his family.

10. Shri Naresh Dixit, advocate has appeared on behalf of the appellants in two appeals while Shri Ajay Kumar Thakur, advocate appeared on behalf of the informant in the batch of appeals. The State was represented by Shri D.K. Sinha, the learned Additional Public Prosecutor and the two respondents in the government appeal have been represented by Shri Akhileshwar Singh, the learned Senior Advocate.

11. Shri Naresh Dixit took us through the evidence of four of the witnesses only and he did not refer to any evidence and submitted that evidence of four witnesses was not reliable. It was contended that the tenant, like, Ram Chhabila Singh or his son, namely, Smt. Chando Devi from whom the witnesses, like, P.W. 7 and others had learnt about the incident did not come to support the allegations as it was contended that the house was surrounded by many houses and none of the residents of those house also came to support the prosecution case. Contention was that P.W.5 Ram Naresh Singh had admitted that he was coming from Deoghar and his house was located in between Lakhisarai and Simultala and

there was no reason shown by him as to why he had not gone to his village and had travelled ahead of his village up to Simultala. It was contended that the only purpose of P.W.5 in making that statement was to project himself as a eye-witness to the occurrence. It was contended by Shri Dixit that it was an imaginary story and Neelam had never lived in the house and as such, there could not be any question that she be abducted and killed.

12. Shri D.K. Sinha also took us through the relevant parts of the evidence and finding recorded by the learned judge while acquitting respondents Vijoy Singh @ Vijoy Kumar Sharma and Tanik Singh @ Awadh Kishore Prasad Singh and submitted that the finding of the learned trial judge that Tanik Singh @ Awadh Kishore Prasad Singh was not named in the First Information Report was made against the record, i.e., the First Information Report which simply indicates that he was very well named in it. Shri Sinha took us through the evidence of four witnesses and pointed out that there are evidence of three witnesses indicating their participation and as such, their acquittal was against the weight of evidence and thus was perverse.

13. Shri Akhileshwar Singh appearing for the two respondents submitted that the charges had not been proved against the two respondents of the government appeal and they had rightly

been acquitted.

14. As against the above submissions, Shri Ajay Kumar Thakur appearing for the informant took us to the relevant records indicating that a Will letters of administration was granted in their favour by the appellants and a probate of the Will as regards the letters of administration was also obtained from the Court *bala bala* against which order of probate, the deceased Neelam, her maternal grandfather as guardian of her mother and her two minor sisters had filed the First Appeal No. 764 of 1979 before this Court in which the Court had passed an order of injunction restraining the respondents in that First Appeal who are the appellants before this Court from alienating any part of the property and further restrained the execution of the probate of the Will as regards the letters of administration by restraining the delivery of possession to the respondents. The matter was remanded by this Court when the appellants in the above noted appeal had expressed their desire of filing the revocation petition seeking the revocation of the order probating the Will and when in fact such an application was filed before the District Judge, while passing an order on 04.09.1981, a Division Bench of this Court had continued the order restraining the respondents in the First Appeal from disposing of any property belonging to the testator without permission of the District Judge. It was further contended by Shri Thakur that Neelam was fighting

tooth and nail to get the order of revocation as regards the letters of administration which was forged and fabricated and on that count the appellants had been restrained either to take possession or to dispose of the properties and that has caused serious difficulties for them and that was the reason that Neelam was picked and butchered. Submission was that the evidence on motive was both documentary and oral, as appears from the evidence of P.W.7 Rajendra Prasad Singh who was the maternal uncle of deceased Neelam. The evidence indicated that Neelam was residing in the house so that the appellants could not take possession of it and she was accompanied in her attempt of holding over the property by her husband, the elder brother of her husband and her maternal uncle P.W.7. The evidence of four witnesses give details of the occurrence and the manner in which the offence was committed and the circumstances attending subsequently on the commission of the offence which indicated that it were the appellants and the two respondents who had participated in commission of the offence. Submission was that the conviction of the appellants was proper and the two respondents of the government appeal were also required to be convicted.

15. The issues arising out of the arguments of the parties, just noticed by me, are two fold. The first question which requires to be answered is as to whether the accused persons had the

requisite motive for eliminating Neelam, the deceased, as she was felt a thorn in their flesh due to the fact that she had waged a war sort of thing by taking the litigation up to this Court against the grant of letters of administration in favour of the appellants and had ultimately succeeded in obtaining certain orders restraining the appellants from alienating any part of the property and on the delivery of possession to them over the property if the same had not been delivered to them. The other question is as to whether Neelam was indeed residing in the house in question and whether she had been taken away by the accused persons as alleged by the prosecution. As regards the killing of Neelam it is no longer an issue after finding of her dead body and the manner in which it was left after killing Neelam. It is indicated that she was killed and further that she had put some serious hurdles in the attempts of her killers in respect of their design in achieving their goal.

As regards the motive, this fact is admitted that the house situated in Simultala which had been described by P.W.21 as the place of occurrence and which had been described in vivid details by the Investigating Officer was undisputedly belonging to late Jang Bahadur Singh and in spite of an attempt by the defence that Neelam was not the daughter of Jang Bahadur Singh, it appears established beyond doubt that she was one of the three daughters of late Jang Bahadur Singh. It does not appear any longer in

question that a Will was brought into existence and on that basis Letters of Administration Case No. 2 of 1979 was filed before the District Judge, Munger. It also appears undisputed that by judgment dated 27.06.1979, the letters of administration was granted in favour of the present set of appellants and a few others which may be apparent from the connected memo of appeal which was filed before this Court upon which First Appeal No. 764 of 1979 was registered. The Division Bench of this Court had passed three different orders on three different dates after filing of the first appeal which was brought by Premlata the mother of Neelam, Neelam Kumari daughter of Jang Bahadur Singh and her two minor sisters, namely, Rekha Kumari (not examined) and Kiran Kumari (P.W.23), who with their mentally retarded mother, were under the guardianship of their maternal grand father (Nana) Ramswaroop Singh. Out of the three orders of the Court passed on 23.01.1981, 02.03.1981 and 04.05.1981 which have been marked Ext.33, the first order indicates that as soon as the respondents no. 1 to 5, i.e., the appellants had appeared before this Court, it was directed by this Court that if the possession had not been delivered to the respondents (i.e., the present appellants) then the same was not to be delivered to them till the disposal of the stay petition. The second part of that order was that money lying in the bank or in the postal savings account, which had not been withdrawn, must

also not be withdrawn until the disposal of the stay petition. It appears from order dated 02.03.1981 that the counsel for the appellants, i.e., Neelam, her mother and her two sisters, informed this Court that they were desirous of filing an application seeking the revocation of order granting letters of administration to the present set of appellants and the permission was granted by this Court. The last order dated 04.05.1981 was passed issuing certain directions to the District Judge, Munger as also to the parties to the suit in the light of the fact that the revocation application had been filed before the District Judge, Munger. It was, firstly, ordered that the respondents (i.e., the present appellants) were restrained from disposing of the properties on the basis of the letters of administration and further no property belonging to the testator was to be disposed of without the permission of the District Judge. Thus, what appears from the above orders passed by this Court in First Appeal No. 764 of 1979, is that in spite of having obtained an order granting letters of administration to them, the appellants had virtually been deprived of the benefits of that order when this Court had passed the orders restraining them to get the possession of properties covered by it or to sell any property or part thereof. Thus the attempt and efforts both of the appellants in getting the properties of Late Jang Bahadur Singh with the house in question, had received serious set back and they had been pushed to such a

brink that they were to toil in the court of the District Judge, Munger to get an order permitting them to administer the properties of Jang Bahadur Singh.

The question which was mooted before this Court during the argument of the present case was as to whether Neelam was residing on the relevant day in the said house. On the above point, there are a number of witnesses who came forward to state that not only Neelam but others, like, P.W.7 Rajendra Prasad Singh, her maternal uncle (Mama) and P.W.18 Ramanand Singh, the elder brother of her husband, were also residing in some part of the house with her. It is true that some of the other occupants of the house, like, Ram Chhabila Singh or his son, namely, Kumud Ranjan Singh besides his sister, namely, Chando Devi who were residing in the house as tenants did not come to support the above fact that Neelam or P.W.18 the informant or P.W.7 the maternal uncle of deceased were residing in that particular house, but while we were being taken through the evidence of witnesses we found that the evidence was satisfactory and convincing that Neelam was residing in the house. P.W.21 the Investigating Officer had inspected the house and he had gone into every nook and corner of the premises. He had found two rooms which had their exit in the passage of the house and he had found that the one, which was situated towards south, had a *chowki* kept in it with one cot and a

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No*

rack was fixed in the wall with some books. There was an *Alagani* over which some clothes were also kept. It was pointed out to P.W.21 that it was the room which was in occupation of Neelam and P.W.21 had also found that besides a *Khadi Chadar*(wrapper of Khadi) which was kept into a cloth bag, some make-up materials or articles were also there in the bag. P.W.21 further found that there was yet another *Alagani* of rope which had been fixed in the wall of the passage and some clothes were also found placed over it. I am not concerned about other articles, like, clothes or *Chadar* or the cot and *Chowki*. One evidence which appears suggesting that some lady was residing in that house was that some make-up articles were found kept in the cloth bag. In addition to this evidence, I find that the witnesses, like, P.W.2 Vinay Kumar Singh @ Ganauri Singh, P.W.3 Ganesh Prasad Singh, who happened to be the father-in-law of the deceased, P.W.4 Chandra Shekhar Prasad Singh and P.W.5 Ram Naresh Singh have all stated that Neelam Devi was residing in that house. P.W.6 Suresh Prasad Singh, though stated that he never made any statement to the police, but considering that P.W.6 had not made any statement on the details of occurrence, specially the manner thereof as to how Neelam Devi was dragged out of the house and was taken away his not having made statement to the police, to me appears not that consequential. This witness had simply stated that

he had the occasion of going into the house because Ram Chhabila Singh, the Block Education Extension Officer, was living in that house as a tenant and he often used to go on account of being a teacher whose superior officer was the said Ram Chhabila Singh. In addition to the above, P.W.6 had given further reasons that he and late Jang Bahadur Singh were colleagues on account of both being teachers and on that account also he knew Neelam and whenever he went inside the house, he found Neelam there. P.W.7 Rajendra Prasad Singh has claimed that he had resided in the house and it appears that his evidence as regards the prosecution story that Neelam was residing there in the house appears acceptable. P.W.23 Kiran Kumari, the sister of Neelam and P.W.3 Ganesh Prasad Singh also gave evidence that Neelam was residing in that particular house. These are some of the evidences which have been adduced by the prosecution to indicate that Neelam was residing in that house.

P.W.7 Rajendra Prasad Singh the *Mama* of Neelam had stated that he was residing there with the informant and the husband of Neelam, because Neelam had some threat perceptions emanating from the accused persons. He had been cross-examined as to whether he had filed any application before the authorities and the witness had stated that he had sent applications to different authorities in respect of the threat which Neelam was getting from

the accused persons. It is true that P.W.7 had not produced any telegram which he had claimed to have sent to different police officers, as may appear from paragraph 11 of his evidence, and it is also true that he had not produced the copy of the other telegrams which he claimed to have transmitted to the Superintendent of Police and the Officer-in-Charge of the police station and further, he had also admitted that he had not shown those documents to the police, he has of course, stated that he had sent letters to different authorities and some of them were still with him. In proof of his claim that he had sent some letters and some of them were still with him, P.W.7 had produced before the court below Ext.31 which was a letter signed by deceased Neelam, daughter of late Jang Bahadur Singh of Village-Lohanda, P.S. Sikandara, District Munger. It was addressed to Shri D.N. Gautam, the Superintendent of Police, Munger (D.W.4) and, as may appear from the very headings of that letter, it had been sent by Rajendra Prasad Singh, P.W.7. Many matters have been stated in this long letter which is spread over seven pages, but what appears relevant for the present discussion is the statements which have been made by Neelam at page 7 of the letter and that was plain statement pointing out that she was apprehending danger to her life from the present set of appellants. Thus, the evidence of witnesses appear carrying a ring of truth and as such, inspire my confidence as

regards the fact that Neelam was residing in the house and the purpose of occupying the house was not to allow the accused persons to get into the possession of it. This, besides being the evidence as regards the question as to whether Neelam was residing in the house, also appears to me evidence of the fact that in spite of having got the letters of administration granted, the appellants had been frustrated by three orders passed by this Court in the first appeal filed by Neelam, her mother and sister and they must have felt further frustrated by the fact that Neelam pitched her tent as regards the possession over the house, into it. These are some of the evidences which were appealing to me on the dual questions of motive for committing the offence as also for answering the question as to whether Neelam was residing in the house. I find that the appellants had a very strong motive as they were finding Neelam as the biggest hurdle, who had waged a solitary war upon them and had shown courage to keep the house in her occupation and not to leave it at any cost and at any moment.

16. The other question which was raised by the learned counsel appearing for the appellants was that the occurrence had taken place in the dead of night at about 10 p.m. and, as appears from the evidence of witnesses, many persons of the surrounding houses had emerged from their houses, hearing the cries of

informant and others, but they did not come to support the prosecution case. It was also submitted that Kumud Ranjan Singh who was the son of Ram Chhabila Singh, one of the tenants of the house, had also not come to support with the sister of Ram Chhabila Singh, namely, Chando Devi. I want to point out that it appears from the evidence that the accused persons were enjoying a very high clot in the locality. P.W.23 Kiran Kumari, who happened to be the sister of deceased Neelam, while being examined in trial was asked to identify the accused persons in doc and, as may appear from paragraph-8 of her deposition, she was not looking at the accused persons. She subsequently identified them, but she started weeping which demeanour of the witness was recorded by the learned judge. The learned judge also recorded that the facial index of P.W.23 Kiran Kumari definitely indicated that she was frightened and she had deposed before the court in a very low voice and in a subdued manner. Kiran Kumari had stated to the court in her evidence that she could not see at the accused persons and the recording of this demeanour of the witness clearly supports my observation that the accused persons were wielding serious clot in the society and no one could dare coming forward to depose against them. In addition to the above fact, which appears from the evidence of witnesses, what is recognized by now is that there is a general trend in the society that people treat criminal

offences as personal matters between the offender and the victim and they simply do not come forward to support a story in respect of commission of a crime. It is unfortunate, but it is the truth presently prevailing in the society. In that view, the argument that other persons of the neighbourhood did not come to support the charges, to me, appears of no substance.

17. So far as the evidence of four eye-witnesses is concerned, P.W.2 Vinay Kumar Singh @ Ganauri Singh, P.W.4 Chandra Shekhar Prasad Singh and P.W.5 Ram Naresh Singh have come forward to support the informant. While making submissions, the learned counsel appearing for the appellants had criticized the claim of P.W.5 of being a witness on the ground that he had admitted in his evidence in paragraph 11 at page 89 of the paper-book that his house was located at a place which was in between Lakhisarai and Simultala and he was coming from Deoghar and was to go to his house. There is no dispute in it that for going to Simultala, one would have to go to Lakhisarai and then to Simultala. If P.W.5 Ram Naresh Singh who was coming from Deoghar to go to his house then it was expected that he should go to his house and should not proceed to Simultala especially when he had not assigned any reasons as to why he did not go to his village home and instead proceed from Lakhisarai to Simultala. This evidence of P.W.5 makes it doubtful that he could

be a competent witness and if he could have assigned any reason for going to Simultala from Lakhisarai or to Sikandara, we could have accepted his claim of being a competent witness. I have some doubt about his claim. I as such, have chosen to eliminate his evidence from my consideration.

18. As regards the evidence of P.Ws. 2, 4 and 18, P.W.2 had stated that he was a driver by profession and he was coming from Lakhisarai to Simultala by a jeep, which he was driving and which bore registration no. BRJ 6472. P.W.2 was accompanied by P.W.4 Chandra Shekhar Prasad Singh and P.W.5 Ram Naresh Singh and they all alighted from the jeep at Sikandara Chowk. After 10-15 minutes P.W.2 heard a *Hulla* and went to the house of Jang Bahadur Singh from where the *Hulla* had emanated and found the present set of appellants going towards north carrying Neelam Devi, who was also raising alarms seeking help from being killed. P.W.2 stated that he and others resisted upon which appellant Ram Nandan Singh warned them to shut-up, else they too would be killed. P.W.2 stated that he had found that P.W.18 had been caught while he was standing by the two respondents Vijay Singh @ Vijay Kumar Singh and Tanik Singh @ Awadh Kishore Prasad Singh. P.W.2 was cross-examined at a great length and I could not find out a single line in that evidence on the basis of which his evidence should not be relied upon.

As regards the evidence of P.W.4 Chandra Shekhar Prasad Singh, he had supported P.W.2 that he was coming by a jeep which was driven by P.W.2 and, as may appear from paragraph-3 of P.W.4, they heard a *Hulla*, they ran towards the house of Jang Bahadur Singh from where the *Hulla* had emanated and saw that the accused persons brought out the deceased from the room and took her towards north.

The evidence of P.W.4 was criticized by the learned counsel for the appellants on the ground that P.W.2 does not see that he had seen the accused dragging Neelam out of the house and then taking her away which was the evidence of P.W.4 and that itself indicated that P.W.4 was not a competent witness. Undisputedly, evidence in criminal trials generally come through witnesses. The occurrence in the present case had taken place at 10 p.m. on 30.08.1985 and P.W.4 had been examined on the 10th of April, 1985. It hardly requires to be pointed out that the evidence being produced orally through witnesses is always bound to have some variation when a court compares the evidence of a witness with that of others. It is not possible to get a word by word corroboration of facts of the case. The human mind and memory both are very fragile and most often the witnesses who come to depose in criminal cases tell something or leave out the other while narrating the incident. This may be the reason for the variance in

the evidence of P.Ws. 2 and 4. Notwithstanding the variance in the evidence of P.Ws. 2 and 4, what appears most convincing is that they did not have any personal bias or reason for coming into the witness-box for giving evidence against the appellants. Besides, the witnesses had not made such a drastic departure from the prosecution case as to making their evidence not fit to be accepted. P.Ws. 2 and 4 are consistent on one of the most important aspect of the case that it were the accused persons who had dragged Neelam from the house and had taken her away from there. They had clearly identified the accused persons and had stated that they lifted Neelam to take her towards north which evidence supports the case of the prosecution which was narrated by P.W.18 in his first information report as also in his evidence in the Court. P.W.18 was a witness who could be a bit different as he was continuously residing in the house and was very much present there. As it appears from his evidence nothing was brought into my notice that there could be any doubt that P.W.18 was not residing in the house and was not present in the night of occurrence there. He has given the description of the incident from its very beginning to the hectic search for Neelam and ultimately finding her dead body lying in the paddy field at a distance of somewhere around 400 yards from the place of occurrence. As such, the variance which was pointed out by the learned counsel for the

appellants in the evidence of P.Ws. 2 and 4 may not be as damaging as to discard their evidence.

19. Neelam was certainly residing in the house in question as appears established from various evidences as also from that of P.W.23 Kiran Kumari her own sister and the evidence of the Investigating Officer that some make-up materials were also found in the room which further probabilized the story as there was no evidence that any other lady than Neelam who could have the requirement of make-up materials was present in the house. Chando Devi, who was the sister of Ram Chhabila Singh, was residing in the section of the house which was in his occupation and she was probably a widow who could not have the need of putting up make-up over her face. It appears that it was the only lady, deceased Neelam, who was in occupation of the house and from the evidence of P.Ws. 2, 4, 5 and 18 we are very much convinced that he was taken away by the accused persons from that house by being dragged with her belongings, like, a couple of Sarees or petticoats or blouses. The evidence indicates that as soon as Neelam was dragged out of her house, she was lifted and taken away. Thus, she was in custody of the accused persons. When her dead body was found in the next morning, it was mutilated and was naked with a wound on her neck as a result of slitting the same, as appears from the evidence of P.W.13 Dr. Satya Narain

Singh, who had found an incised wound in front of the neck at the level of the thyroid cartilage extending from left to right cutting the external mastoid muscles of both the sides and had cut all veins and vessels of the neck on both sides and the injury was deep to cervical vertebra. P.W.13 had found the trachea and the esophagus also cut through and through. It was an ante-mortem injury which was caused by some sharp cutting weapon within 24 hours of the holding of the post-mortem examination. The accused persons have not given any explanation even in their statement under Section 313 Cr.P.C. as to how Neelam happened to have that fatal injury which could be sufficient in the ordinary course of nature to cause death. Thus, the conviction of the appellants for charges could not be said to be bad on facts of the case.

20. As regards the participation of the two respondents of the Governmental Appeal, the evidence of P.Ws. 2, 4 and 18 clearly indicate that they had come with the appellants and some unknown others and no sooner they had come they pulled down P.W.18 from the rickshaw and took him into the corner of the premises near the well. P.W.5 had given evidence exonerating the two respondents but I have already eliminated the evidence of P.W.5 from my consideration. As regards the evidence of P.Ws. 2, 4 and 18, there is a consistency in their evidence as regards the participation of the two appellants. The learned trial Judge

acquitted the two appellants holding that there was lack of evidence and further holding that respondent Tanik Singh @ Awadh Kishore Prasad Singh had not even been named in the First Information Report. This appears a finding, which is not borne out from the record of the case. Tanik Singh @ Awadh Kishore Prasad Singh was duly named in the First Information Report. It is true that the First Information Report did not contain any specific allegation against him, but the witnesses stated that respondent Vijay Singh @ Vijay Kumar Sharma and Tanik Singh @ Awadh Kishore Prasad Singh both caught P.W.18 and took him into the corner of the premises near a well and kept him confined till the accused persons had achieved their goal of capturing Neelam from the house and of lifting her to take her away. The evidence available on record does indicate that the findings recorded by the learned trial Judge as regards the acquittal of the two respondents was definitely not borne out from the evidence of witnesses and the First Information Report.

21. It was submitted that they had not committed the offences under Sections 364 and 302 of the Indian Penal Code. In this connection I want to point out that the charges had been framed under Sections 364/34 and 302/34 of the Indian Penal Code. Section 34 of the Indian Penal Code does not define any substantive sentence rather it lays down a rule of evidence that if

from material evidence, it is shown that the accused persons had acted in furtherance of their common intention, then even if the main act had been committed by any of them all of them was equally liable for the offence as if the same had been committed by him. In order to bringing the case of an accused into the purview of Section 34 of the Indian Penal Code, the Court has to find out as to whether there was any pre-meeting of mind or in other words had there been any consultations between the accused persons which could fall in the class of conspiracy hatched up by them to commit some unlawful act or an act which may not be unlawful if the means of committing it was unlawful. There could not be direct evidence in such matters and in most of the cases, the Court has to depend upon the facts and circumstances of the case so as to find out as to whether there had been pre-concert between the accused persons before they had embarked upon achieving their goal. Here in the present case, I have already noted, that there was motive for the accused persons to commit the offence as Neelam had not only waged a war against them, but was holding on to the possession of the premises so as not to allow any of the appellants to enter into it by virtue of the order granting letters of administration in their favour. The accused persons must have been deeply frustrated after this Court had passed orders restraining either the delivery of possession or the withdrawal of

any part of money deposited in bank or anywhere and further restraining the alienation of any part of the properties which were covered by the letters of administration. These all circumstances had led to them, as appears from the evidence, to have a pre-concert and then to come on to the place of occurrence together to commit different acts. Respondents Vijay Singh @ Vijay Kumar Sharma and Tanik Singh @ Awadh Kishore Prasad Singh have been shown from the evidence, to have put the informant under wrongful confinement when they had taken him into the corner of the house near a well. The purpose of this act of the two respondents was only to eliminate any chances of resistance coming into the further acts of the other accused persons of capturing Neelam from inside the house and taking her away. The other accused persons (i.e., the appellants) entered inside the house and dragged Neelam out and lifted her to take her away and subsequently her dead body was found in a paddy field. Thus, the sharing of the common intention by contributing into the commission of the offence in their own way by the two respondents of the Governmental Appeal is clearly established. As such, I set aside the judgment of acquittal in respect of respondents Vijay Singh @ Vijay Kumar Sharma and Tanik Singh @ Awadh Kishore Prasad Singh by allowing the Government Appeal. I hold the two guilty of committing offences under Sections 364/34 and

302/34 of the Indian Penal Code and direct each of them to suffer rigorous imprisonment on each of the two counts each for life. In the result, the Government Appeal is allowed. The connected two criminal appeals appear of no merit and they are dismissed. The appellants are on bail. Let them surrender along with the two respondents of the Government Appeal before the Court below to serve out their sentences which are directed to run concurrently.

(Dharnidhar Jha, J.)

Amaresh Kumar Lal, J.: I agree.

(Amaresh Kumar Lal, J.)

Sanjay/N.A.F.R.

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